



UTILITY CONTRACTORS ASSOCIATION OF CONNECTICUT

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Senate Bill 1032, An Act Concerning the Applicability of the Statute of Limitations to Construction and Design Actions Brought by the State or a Political Subdivision of the State

Judiciary Committee

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The Utility Contractors Association of Connecticut represents contractors, suppliers and vendors in the utility and site work construction industry in Connecticut. UCAC contractor members perform work to improve and enhance the utility infrastructure in the state. Additionally, UCAC members who contract with the state could be subject to unending liability and exposure as a result of the Lombardo decision.

Senate Bill 1032, An Act Concerning the Applicability of the of Limitations to Construction and Design Actions Brought by the State or a Political Subdivision of the State, is designed to address the decision in State of Connecticut v. Lombardo Brothers Mason Contractors, Inc., et al. 307 Conn. 412 (2012) by abrogating the common law doctrine of *nullum tempus occurrit regi* (no time runs against the king) in certain contract and tort actions.

In Lombardo, the state Supreme Court found that statutes of limitation for asserting claims against construction contractors and professional engineers do not apply to the state of Connecticut. The coalition seeks a statute of limitations that applies to potential claims by the state relating to or arising from all potential design and construction related matters consistent with other states and the federal government. Senate Bill 1032 would require the state to bring a claim against an architect or engineer for injury arising out of construction of a state project within 10 years of its substantial completion.

Senate Bill 1032 should be amended to adopt a statute of limitations that would apply to the state of Connecticut in the same manner as to actions brought by private persons. This would only be fair for companies like utility construction and contracting companies that contract with the state. There is no valid reason that the state should not be subject to the same statute of limitations as companies that contract with the state. UCAC signed onto an *amicus curiae* brief submitted to the Connecticut Supreme Court in support of the defendant-contractors, and is a member of a coalition of engineering, design and construction contracting trade associations that seek to address the Lombardo decision through legislation.

The Lombardo decision effectively exposes architects, engineers, designers and contractors who perform work under a state contract to unending liability for allegations of defective workmanship. The commercial construction industry has recovered all too slowly from the worst recession since World War II, and there are significant potential consequences of the decision if the legislature does not act to address it.

In Lombardo, the court found that the ancient legal doctrine of *nullum tempus* is well established in Connecticut's common law. The court, as a result, exempted the state from the operation of statutes of limitation and repose and granted the state authority to sue contractors, design professionals and others for alleged defects in the design and construction of the UConn Law School library 12 years after the project was completed.

The decision will have a significant impact on those who contract with the state. State contractors have serious, unending exposure for projects, years after completion and delivery. As a result, commercial general liability insurance will become more costly. Surety bonds will be more difficult to obtain, particularly for smaller, specialty contractors. Construction costs will likely increase. General contractors, construction managers and subcontractors are exposed to the threat of perpetual litigation on state projects. In short, the decision puts state contractors at greater risk and creates significant uncertainty in the marketplace.

One of the practical effects of the decision and the failure to address it for construction contractors as well as the state is fewer bids, which will reduce competition and raise prices for public owners.

The Court all but invites the legislature to intervene. Its opinion repeatedly disclaims the authority to say whether *nullum tempus* is still sensible public policy and recognizes the separation of powers, stating that it is for the General Assembly, not the court, to say when the state's sovereign immunity should be waived.

The decision raises a number of concerns for insurers and bond producers. It has the potential to inject a dangerous amount of uncertainty into underwriting insurance for state projects and increase the cost of insurance for companies that do business with the state. There is nothing to prevent the state from suing over an alleged defect in a project 20, 30 or 100 years after construction and delivery of a project.

Senate Bill 1032 should be amended to simply require the state to adhere to the same statute of limitations that it imposes on contractors, which only seems fair particularly with the leverage the state has, and for allocating risk. The decision, if it is not addressed, gives the state substantial leverage over contractors. Also, it is not in the state's long-term interests for the decision to remain good law. It will only make the state a less favorable environment in which to do business.

For additional information or any questions concerning Senate Bill 1032, please contact Matthew Hallisey, Executive Director of UCAC, at (860) 978-7346.